

IN THE UNITED STATES DISTRICT COURT  
FOR THE STATE OF MASSACHUSETTS

**05-10750 RWZ**

DEBORAH KELLY,

Plaintiff,

MAGISTRATE JUDGE *Alexander*

Case No:

v.

PAUL DONNELLY,  
MICHAEL BYERS,  
SGT. KEITH JACKSON,  
OFFICER JOHN DOE, in  
their individual and  
official capacities, and  
THE TOWN OF ROCKLAND,  
MASSACHUSETTS,

Defendants.

RECEIPT # 63550  
AMOUNT \$ 220  
SUMMONS ISSUED Y  
LOCAL RULE 4.1 1  
WAIVER FORM 1  
MCF ISSUED 1  
BY DPTY. CLK. EDM  
DATE 4-14-05

RECEIVED  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
APR 14 2005

**COMPLAINT AND DEMAND FOR JURY TRIAL**

**JURISDICTION**

1. This action is brought pursuant to 42 USC Sections 1983, 1988 and the Fourth and Fourteenth Amendments. Jurisdiction is based upon 28 USC Section 1331 and 1343(1), (3), (4) and the aforementioned statutory and constitutional provisions.
2. The plaintiffs invoke the pendent jurisdiction of this Court and its supplemental jurisdiction under 28 USC Section 1367 to consider claims arising under state law.

**PARTIES**

3. Plaintiff-Deborah Kelly is, or was at all times pertinent, a resident of Rockland, Massachusetts.
4. Defendants-Donnelly, Byers, Jackson, and John Doe, were all police officers employed by the Rockland Police Department,

Rockland, Massachusetts, acting under color of state law. They are all being sued in both their individual and official capacities.

5. Defendant-Town of Rockland is a municipality within the Commonwealth of Massachusetts.

GENERAL ALLEGATIONS

6. On or about April 21, 2002, Rockland police were called to the home of Mr. Louis Rubbo of 43 Wilson Street in Rockland.
7. Police had been to Mr. Rubbo's home on many occasions during the preceding nine months. The reason for the police visits was a property dispute between Mr. Rubbo and Mr. George Stoddard of 51 Wilson Street.
8. Plaintiff-Kelly was residing with Mr. Stoddard at the time.
9. After Rockland police arrived at the scene, Mr. Rubbo indicated that he was having Ms. Kelly's pickup truck towed from what Rubbo claimed to be "his" driveway.
10. Kelly was told by the defendant-officers to move her truck.
11. Ms. Kelly drove her truck to the front of Mr. Stoddard's porch.
12. Donnelly, who claims that Kelly drove at him in an assaultive fashion, thereupon smashed Kelly's window with his metal baton.
13. Kelly, frightened by Donnelly's use of force, ran into Stoddard's home to avoid further assault and danger.
14. At least four Rockland police officers, Donnelly, Byers, Jackson, and Somers, followed Kelly into her home.
15. Donnelly, Byers, and Jackson threw Kelly to the ground, used

excessive force in restraining her, and inflicted wanton and negligent injury upon Ms. Kelly.

16. The officers used far more force than was necessary to effect the plaintiff's arrest.

17. After Kelly was arrested, the officers continued to use far more force than was necessary under all of the attendant circumstances.

18. At one point, the officers lifted Kelly up off the ground after her shirt had been pushed or pulled above her breasts.

19. When the defendants lifted Kelly up off they ground, they exposed her breasts, to which one officer responded, ``Whooo.''

20. Kelly asked that her shift be pulled down, but the officers refused to do so.

21. The injuries inflicted by the officers include, but are not limited to, head, face, knee injuries, embarrassment, humiliation, and emotional distress.

22. Kelly was arrested and charged with several offenses.

COUNT I:  
USE OF EXCESSIVE FORCE  
IN VIOLATION OF FOURTH AMENDMENT  
AGAINST ALL DEFENDANT-OFFICERS

23. The plaintiff incorporates by reference all of the preceding paragraphs of this complaint and states further as follows.

24. There was no excuse or justification for the high level of force that the defendant-officers used to restrain and arrest Plaintiff-Kelly. Such a high level of force was not necessary.

25. There was no excuse or justification for the high level of force that the defendant-officers continued to use after Plaintiff-Kelly was under arrest. Such a high level of force was not necessary.
26. There was no excuse or justification for exposing the plaintiff's breasts and then refusing to move her shirt down on her body.
27. The acts of the defendants constituted the use of objectively excessive and unreasonable force under all the circumstances of the plaintiff's arrest.
28. At the time of the events described, it was clearly established law that the use of excessive force violated clearly-established constitutional rights.
29. As the direct and proximate result of the officer's actions, the plaintiff suffered painful injuries to her head, face, and knees.
30. As the direct and proximate result of the officer's actions, the plaintiff suffered severe emotional distress, including but not limited to anxiety, sleeplessness, anger, and outrage.

COUNT II:  
NEGLECT UNDER STATE LAW  
AGAINST ALL DEFENDANT-OFFICERS

31. The plaintiff incorporates by reference all of the preceding paragraphs of this complaint and states further as follows.
32. The plaintiffs had a duty to refrain from inflicting unnecessary injuries upon the plaintiff.

33. The plaintiffs breached that duty by using an excessive and negligent level of force in their arrest and post-arrest conduct toward Plaintiff-Kelly.

34. The plaintiff suffered injuries as the result of that use of excessive and negligent force.

35. As the direct and proximate result of the officers' actions, the plaintiff suffered painful injuries to her head, face, and knees.

36. As the direct and proximate result of the officers' actions, the plaintiff suffered severe emotional distress, including but not limited to anxiety, sleeplessness, anger, and outrage.

COUNT III:  
NEGLIGENT SUPERVISION AND  
SECTION 1983 FAILURE TO INTERVENE  
BY DEFENDANT-JACKSON

37. Sergeant Jackson had an opportunity and an obligation as the senior officer on the scene to stop or to ameliorate the physical attack upon Deborah Kelly by Byers and Donnelly.

38. Jackson had a duty as the senior officer to insure that junior officers did not use more force against Kelly than was reasonable and necessary.

39. Jackson negligently failed to control the junior officers.

40. As the result of Jackson's inaction, Kelly's injuries were greater than they might otherwise have been.

41. Jackson was deliberately indifferent to the excessive use of force against Kelly by junior officers who he had the authority and the obligation to control.

42. At the time of the events described, it was clearly established law that a senior officer had the obligation to

stop or ameliorate the excessive force by other officers he had the authority to control.

43. As the direct and proximate result of Defendant-Jackson's action and inaction, the plaintiff suffered painful injuries.

44. As the direct and proximate result of Defendant-Jackson's action and inaction, the plaintiff suffered severe emotional distress, including but not limited to anxiety, sleeplessness, anger, and outrage.

COUNT IV:  
MONELL LIABILITY BY  
THE TOWN OF ROCKLAND, MASS.

45. The plaintiff incorporates by reference the preceding paragraphs of the Complaint and states further as follows.

46. The Town's failure to adequately train its officers in the use of force is readily apparent on the facts of this case.

47. The Town was deliberately indifferent to the constitutional rights of its citizens to be free from the unreasonable use of force when it failed to adequately train its officers.

48. Prior to the incident involving the plaintiffs, the Town was aware of previous incidents involving the defendants in which the defendants had used excessive force on other citizens. The allegations of this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

49. The Defendant-Town tacitly authorized the defendants' conduct, without which their assaultive conduct against the plaintiff would not have occurred.

50. The Town is vested by state law with the authority to make policy for the Police Department on the use of force. The Town was aware of a pattern of using excessive force by police officers and was aware of inadequate training of its police officers. The allegations of this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

51. It was obvious that failing to correct this pattern of excessive force and unlawful entries would lead to violations of citizens' constitutional rights. The failure of the Town to take remedial action resulted in the denial of the plaintiff's civil rights by police officers. The allegations of this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

52. Through the actions and inactions of the Town, the Town adopted a policy, practice, or custom of permitting and tolerating constitutional violations by its police officers.

53. As a direct and proximate result of the actions of the Town, the plaintiff suffered physical and economic damages.

**DEMAND FOR TRIAL BY JURY**

54. The plaintiff demands a trial by jury.

**RELIEF REQUESTED**

WHEREFORE, the plaintiff requests that the finder of fact award:

- 1) Compensatory, economic damages;
- 2) Damages for emotional distress;

- 3) Punitive damages;
- 4) Pre-judgment interest;
- 5) Attorneys fees and costs; and
- 6) Such other relief as is just and equitable under the circumstances.

Respectfully Submitted,

---

Daniel S. Sharp  
Attorney for Plaintiff  
(BBO 565524)  
48 Locust Street  
Marblehead, MA 01945  
781-639-1862



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Deborah Kelly v. Paul Donnelly
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 150, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 198, 262, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 890. \*Also complete AO 120 as Applicable for patent, trademark and copyright cases
- ☐ III. 110, 120, 130, 140, 161, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 680, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 162, 163.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Daniel S. Sharp  
ADDRESS 48 Locust Street, Marblehead, MA 01945  
TELEPHONE NO. 781-639-1862

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS** Deborah Kelly**DEFENDANTS** Paul Donnelly, Michael Byers, Sgt. Keith Jackson, Officer John Doe, and the Town of Rockland, Massachusetts.**(b)** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Plymouth  
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Plymouth  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c)** ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)Daniel S. Sharp 781-639-1862  
48 Locust Street  
Marblehead, MA 01945

ATTORNEYS (IF KNOWN)

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**V. NATURE OF SUIT**

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 851 HIA (1395ff) <input type="checkbox"/> 852 Black Lung (923) <input type="checkbox"/> 853 DIWC/DIWW (405(g)) <input type="checkbox"/> 854 SSID Title XVI <input type="checkbox"/> 855 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Fourth and 14th Amendments. 42 USC Section 1983. Pendent state claims. Plaintiff was beaten by police during arrest. Excessive force.

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND \$**

CHECK YES only if demanded in complaint.

**JURY DEMAND:** ☒ YES ☐ NO**VIII. RELATED CASE(S)** (See instructions):

IF ANY NONE

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_